IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1943 of 2004
with
CIVIL APPLICATION NO. 6997 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CIVIL SUPPLIES CORPORATION LIMITED

Versus

SANJAY MAHESHBHAI VAISHNAV

Appearance:
1. First Appeal No. 1943 of 2004
MR KM PATEL for the Appellant.
MR BY MANKAD for the Respondent.

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2004

ORAL JUDGEMENT

1. This appeal is preferred to challenge the

judgment and decree rendered by the learned Civil Judge (S.D.), Kutch, at Bhuj, in Regular Civil Suit No.332 of 1990, on 4th May, 2002.

1.1 The said suit was preferred by present respondent for a declaration and an injunction against the present appellant in respect of orders of punishment passed against the respondent.

2. The case against the respondent was that he had indulged into activities detrimental to the interest of the appellant, which had resulted into shortfall of essential supplied like levy sugar, Tuver dal, Palmolene oil. After show cause notice was served, the respondent gave reply stating that the mistake is bona fide and it has occurred because of his inexperience. He also stated that, he accepts his moral responsibility for the shortfall of Tuver dal and the amount came to be recovered from him.

3. The appellant, ultimately, passed orders No.1510, 1511 and 1512 on 16th April, 1990, imposing punishments on the respondent. The respondent was reverted to the lower post, by way of major punishment and recovery of value of the shortfall, by way of minor punishment.

4. Though the suit was preferred to challenge all punishments, the respondent, by passing a Purshis before the Trial Court, dropped the challenge to minor punishments and the Trial Court, after considering the material before it, came to a conclusion that the order of reversion cannot be sustained and set aside the same by the impugned judgment and decree.

4.1 Aggrieved by the said judgment and decree, the original defendants have preferred the present appeal.

5. Heard learned Advocates, Mr. Patel, for the appellant and Mr. Mankad, for the respondent.

6. Without entering into the merits of the case against the respondent, the appeal can be disposed of on the solitary ground of non-compliance of principles of natural justice. To this, learned Advocate for the appellant contended that the notice was issued, which was replied to. However, there is no dispute about the fact that, in the reply, the respondent has contended that it was a bona fide mistake for want of experience on his part and, therefore, although there is a shortfall in the commodities, before concluding and imposing major punishment, it was incumbent upon the appellant to have

held a departmental inquiry to ascertain whether the shortfall call for imposement of penalty.

7. In view of the fact that the major punishment is imposed without holding an inquiry, this Court is of the opinion that no error can be said to have been committed by the Trial Court while setting aside the major punishment of reversion challenged in the suit and, therefore, this appeal cannot be entertained.

8. The appeal must fail on account of the foregoing reasons and it is dismissed. At the same time, this dismissal may not be taken to mean debarring the appellant from an action in accordance with law. No costs.

9. In view of the dismissal of the appeal, Civil Application for stay does not surive. It shall stand disposed of accordingly. Notice is discharged with no order as to costs.

[A. L. DAVE, J.]

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